**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001134 / Case Ref No: 0614-12752**

**Appellant Landlord:** Raymond Gannon

**Respondent Tenant:** Bashir Hassan, Muna Jama

**Address of Rented Dwelling:** 18 Synge Street, Flat 6, Portobello , Dublin 8, D08T0X8

**Tribunal:** John FitzGerald (Chairperson)

Orla Coyne, Thomas Reilly

**Venue:** Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2,

**Date & time of Hearing:** 22 July 2015 at 2:30

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| **Attendees:** | For Appellant: Tom Brady, Agent;  Colm Brady, Agent.  For Respondent: Bashir Hassan Tenant |
| **In Attendance:** | Gwen Malone Stenographers. |

**1. Background:**

On 19 June 2014 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on 06 March 2015. The Adjudicator determined that

The Respondent Landlord shall pay the total sum of €372.52 to the Applicant Tenant, within 7 days of the date of issue of the Order, reason being the unjustifiably retained portion of the security deposit of €450, plus damages of €100 for the consequences of retaining the said deposit, having deducted the sum of €177.48 for rent, in respect of the tenancy of the dwelling at Flat 6, 18 Synge Street, Dublin 8.

Subsequently the following appeal was received by the PRTB from the Landlord on 16 April 2015. The grounds of the appeal: Deposit retention, and this was approved by the Board at their meeting on 15 May 2015.

The PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, Thomas Reilly and John FitzGerald as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald to be the chairperson of the Tribunal (“the Chairperson”).

On 15 June 2015 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 22 July 2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

**2. Documents Submitted Prior to the Hearing Included:**

* 1. PRTB File

**3. Documents Submitted at the Hearing Included:**

None

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received the PRTB document entitled “Tribunal Procedures”.

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. He advised that any member of the Tribunal may from time to time ask questions which must be answered

The Chairperson also reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

Evidence of Tom Brady (Appellant Landlord’s Agent)

The Appellant Landlord’s Agent stated that his client the Appellant Landlord wished to sell the dwelling in January 2014. He spoke with the Respondent Tenant to advise him of the possible sale and the Respondent Tenant indicated that he would like to stay on in the dwelling if possible. The dwelling was sold on 1 February 2014. The Appellant Landlord’s Agent contacted the Respondent Tenant in March 2014 to ask if he would like to stay on in the tenancy which would be under new ownership at an increased rent of €650 per month from the current position of €450 which he was paying. The Respondent Tenant stated to him that he was unable to pay that level of rent and would move out. The Tribunal then put questions to the Appellant Landlord’s Agent regarding the duration of the lease agreement and was told by the Appellant Landlord’s Agent that it would expire on 12 May 2014. The Appellant Landlord’s Agent outlined that on 22 April 2014 he asked the Respondent Tenant to give them 28 days notice of his intention to vacate the dwelling in writing as per a condition in the tenancy agreement between the parties. He told the Tribunal that on 6 May 2014 an email arrived from the Respondent Tenant confirming he would vacate the dwelling in 28 days time. He also advised the Tribunal that it was around this time that they received news from the Respondent Tenant that his girlfriend had become pregnant and that they would be moving out in an attempt to get more suitable accommodation.

The Appellant Landlord’s Agent stated that he knew that that the Respondent Tenant’s girlfriend was residing in the dwelling without the agreement of the Appellant Landlord. He advised the Tribunal that his client, the Appellant Landlord who was acting on behalf of the new owners wanted the Respondent Tenant to either sign a new lease at the increased rent or indicate in writing by giving notice to vacate the dwelling and in this regard the Appellant Landlord’s Agent outlined that he had sent him a text on 2 May 2014 to this effect. He also wrote to the Respondent Tenant on 3 May 2014 requesting the same response and it came in the form of an email on May 6. The Appellant Landlord’s Agent acknowledged this in a letter to the Respondent Tenant on 7 May 2014 and set out the final ‘closing out’ requirements to the Respondent Tenant in a letter dated 8 May 2014.

On 12 May 2014 he got a call from the Respondent Tenant to say he had vacated the dwelling and on 13 May 2014 the Appellant Landlord’s Agent met with the Respondent Tenant to go through the final matters with him in person. He told the Respondent Tenant that as he had given 28 days notice from 6 May 2014 that he would be liable for all rent payments up to June 3 and as a result of which he would owe the Appellant Landlord €494.37 in rent. He calculated this on the basis that rent had been paid up to and including 30 April 2014 and therefore the landlord claimed for rent owed in respect of the month of May at €450 plus 3 days at €14.79 per day = €44.37, totalling €494.37.

He therefore stated that the Appellant Landlord was rightfully entitled to retain all of the Respondent Tenant’s security deposit in lieu of outstanding rent payments. He stated in conclusion that the Respondent Tenant was a good tenant and they never had ‘any negative issues with him but they were doing their job in the circumstances. He relied on the condition in the tenancy agreement that 28 days notice had to be given by the Tenant before he vacated. The tenant had vacated the dwelling and the fixed term agreement had expired, the tenant continued to be liable for rent until the 28 day notice had expired.

Respondent Tenant’s Case:

Evidence of Bashir Hassan (Respondent Tenant)

The Respondent Tenant stated that he believed that he was being pressurized once the dwelling was ‘sale agreed’ to state if he would stay in the dwelling or vacate it. This together with the agent asking him to pay the rent at a higher rate of €650 per month. He outlined that he could not afford to pay this amount and agreed with the agent that he would give notice once he could organise a new dwelling to live in. He stated that he was not aware that the dwelling was for sale and was put under undue pressure from the Appellant Landlord’s Agent. He believed he had no option but to leave and was effectively made homeless. This situation prevailed for twelve weeks his girlfriend who was pregnant had to live temporarily with her relatives. The tenant also had further difficulty as he was also studying and sitting exams which resulted in more stress which caused him he stated having to re-sit his exams .

He sent a purported notice on 6 May 2015 by email to the agent outlining his willingness to leave the dwelling and he stated that the Appellant Landlord’s Agent signalled to him the importance of moving. He gave evidence that on the evening he vacated he had no option but to stay in a B & B and later approached the housing section of Dublin City Council who organized some temporary accommodation for him. He also had a problem obtaining post from the Agent following his termination and stated that in his opinion his letters had been binned. He accepted that he should have to pay rent up to 13 May 2014 at the old rate of rent in accordance with the terms of his fixed term lease agreement and would be happy to have the sum of €177.48 deducted from the security deposit in this regard.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy commenced 13 May 2013.

2. The tenancy terminated 12 May 2014.

3. The rent payable was €450 per month.

4. The security deposit paid was €450 currently retained by the Appellant Landlord.

5. The Landlord and tenant both paid €45 to register the tenancy with the PRTB.

6. No notices to terminate were served by either party.

**7. Findings and Reasons:**

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties, the Tribunal’s findings and reasons therefore, are set out hereunder.

7.1 Finding:

The Tribunal finds that the Appellant Landlord is in breach of his obligation for failing to issue a correct written notice of a rent increase to the Respondent Tenant in respect of the tenancy.

Reasons:

1. The Tribunal accepts and the oral evidence given by the tenant confirmed that no proper notice of a rent increase was issued contrary to section 22(2) of the Residential Tenancies Act 2004. The Tribunal also accepts that the Respondent Tenant did not challenge this increase as he believed he had no alternative in the matter.

7.2 Finding:

The Tribunal find that the Appellant Landlord has unlawfully retained a portion of the Respondent Tenant’s security deposit at the termination of the tenancy in the sum of €272.52. The Tribunal calculate this amount as being 12 days rent @ €14.79 per day being the sum of €177.48 deducting this sum from the security deposit of €450 leaves the sum of €272.52 to be refunded to the Tenant. The Tribunal also awards the sum of €500 damages for the inconvenience caused by denying the tenant the use of the withheld security.

Reasons:

The Appellant Landlord is required to return a security deposit in accordance with section 12(1)(d) of the act unless there is rent outstanding or a deterioration in the condition of the dwelling above normal wear and tear. The Appellant Landlord wrongfully calculated rent at a higher rate for the period until the Tenant vacated the dwelling and withheld this amount from the tenant’s security deposit unlawfully.

7.3 Finding:

The Tribunal finds that the including of a condition in the fixed term lease between the parties whereby the Tenant had to give 28 days notice, to the landlord before he vacated was not in compliance with section 34 of the Residential Tenancies Act 2004.

Reasons:

The Landlord sought the Tenant to pay him rent for the period of time after he had vacated the Dwelling up until the 28 day notice had expired. If parties agree on the circumstances in which either party can terminate a fixed term lease, the grounds must be one of the grounds set out in the Table to section 34 of the Residential Tenancies Act 2004. This was not the situation here. Also under section 195 of the Residential Tenancies Act 2004 a tenant is required to notify the Landlord if he or she wishes to stay on in a dwelling once the fixed term of the tenancy has expired. Under the Residential Tenancies Act 2004 the tenant did not have to give the Landlord notice if he was going to leave the Dwelling, which he did when the fixed term of the tenancy had expired.

**8. Determination:**

**Tribunal Reference TR0415-001134**

**In the matter of Raymond Gannon (Landlord) and Bashir Hassan, Muna Jama (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

In the matter of Raymond Gannon (Appellant Landlord) and Bashir Hassan and Muna Jama (Respondent Tenants), the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 determines that:

The Appellant Landlord shall pay the total sum of €772.52 within 7 days of the date of the issue of the order, being damages in the sum of €500 for the consequences of withholding part of the Respondent Tenant’s security deposit in respect of the tenancy and €272.25 being the unjustifiably retained portion of the security deposit in respect of the tenancy at Flat 6, 18 Synge St, Portobello, Dublin 8.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 03/08/2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\John FitzGerald.png |

**John FitzGerald Chairperson**

For and on behalf of the Tribunal.